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CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

BY: *MTB*

DEPUTY

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRYAN VESS, on behalf of himself and all  
 others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; and DOES 1  
 through 50, inclusive,

Defendants.

CASE NO. **10CV 0920 JAH**

CLASS ACTION

COMPLAINT FOR:

1. VIOLATION OF TILA AND REGULATION Z;
2. DECLARATORY AND INJUNCTIVE RELIEF;
3. BREACH OF CONTRACT;
4. VIOL. OF CAL. BUS. & PROF. CODE § 17200, ET SEQ.; AND
5. VIOL. OF CAL. BUS. & PROF. CODE § 17200, ET SEQ.

[DEMAND FOR JURY TRIAL]

Plaintiff, on behalf of himself, and all others similarly situated, alleges upon personal knowledge as to himself and his acts, and as to all other matters upon information and belief, as follows:

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## **I. INTRODUCTION**

1. This case is about Countrywide Financial Group's, now operating as Bank of America, N.A., ("Defendant") illegal and improper reduction and suspension of credit limits on home equity lines of credit ("HELOCs") across the country in a thinly-veiled and unlawful attempt to limit its exposure to the risk of collapse in the United States housing market and to rid itself of below-market interest rate loans. Defendant broke its promises to homeowners that were depending on their HELOCs and broke the law in the process.

2. Defendant originates, services, and owns billions of dollars worth of prime and subprime mortgages, including the HELOCs at issue in this Complaint. Each member of the proposed class had a HELOC that Defendant either unfairly or unlawfully reduced or suspended without justification. Plaintiffs bring this class action on behalf of themselves and the putative class for injunctive and declaratory relief, actual damages and attorneys' fees under the Truth-in-Lending Act (15 U.S.C. § 1640(a)) ("TILA"), damages for breach of contract and breach of the implied covenants of good faith and fair dealing, and restitution under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17203 ("UCL").

## **II. NATURE OF ACTION**

3. As early as 2008, Defendant began sending form letters to thousands of homeowners indicating that their HELOCs were being summarily decreased or suspended because of a purported decline in their home values. Many of these homes had not actually suffered a significant decline in value, but Defendants nevertheless suspended or reduced the credit limits on the corresponding HELOCs. Defendant never informed Plaintiff how it determined his home value had significantly declined. Instead, it informed Plaintiff that if he sought to reinstate his credit limit he would have to obtain a formal appraisal at his own expense.

4. On information and belief, for the purposes of the suspensions and reductions of its HELOCs, Defendant determined its borrowers' home values through dubious automated valuation models ("AVMs"), which are computerized econometric models tied to a database of information related to home values. These self-serving, secret AVM's were specifically tailored to serve Defendant's unlawful purpose of manufacturing a basis to decrease or suspend

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1 homeowners' HELOC loans to protect Defendant's own financial interests associated with the  
 2 downside risk of the declining housing market and to get rid of the low interest rate HELOC  
 3 loans. As a result, Defendant sent its suspension and reduction letters to many homeowners,  
 4 including the Plaintiff, whose home values had not declined significantly and reduced the credit  
 5 limits on the corresponding HELOCs.

6 5. On information and belief, the basis of Defendant's letters was an AVM that used  
 7 unreliable or inaccurate data. The home loan industry made widespread use of the AVMs in  
 8 underwriting the loans that led to the current mortgage meltdown. Indeed, the abuse and  
 9 manipulation of AVMs to overvalue real estate (in order to justify larger loans and  
 10 correspondingly larger origination and/or transaction fees) has been widely criticized. AVMs  
 11 remain just as susceptible to manipulation and gross error now that banks are aggressively  
 12 seeking to reduce their outstanding credit lines by falsely devaluing such properties.

13 6. Defendant's systematic mass reduction and suspension of its HELOCs was unlawful  
 14 and deceptive. Federal regulators have warned financial institutions that it is a direct violation of  
 15 federal law to "reduce the credit limits of all HELOC accounts in a geographic area in which real  
 16 estate values are generally declining without assessing the value of the collateral that secures  
 17 each affected HELOC account." Defendant's misuse of its secret, self-serving AVMs failed to  
 18 account for individual property characteristics and other critical variables, thereby preventing  
 19 Defendant from having a sound factual basis for the HELOC suspensions and reductions and  
 20 which deprived homeowners of their lawful right to an individual determination of whether their  
 21 homes had suffered a significant decline in value.

### 22 **III. JURISDICTION AND VENUE**

23 7. Defendant is a national banking association whose head offices are in North  
 24 Carolina, and is a citizen of North Carolina under 28 U.S.C. § 1348 and *Wachovia Bank, N.A. v.*  
 25 *Schmidt*, 546 U.S. 303 (2006). This Complaint alleges claims on behalf of a national class of  
 26 homeowners who are minimally diverse from Defendant. On information and belief, the  
 27 aggregate of these claims exceed the sum or value of \$5,000,000. This Court has subject matter  
 28 jurisdiction over this case under 28 U.S.C. § 1332(d)(2). This Court further has federal question

1 jurisdiction under 28 U.S.C. § 1331, as the action arises in significant part under Regulation Z of  
 2 TILA, 15 U.S.C. § 1601 et seq., 12 C.F.R. § 226.5b. Supplemental jurisdiction over Plaintiffs'  
 3 state law claims is proper under 28 U.S.C. § 1367.

4 8. This Court has personal jurisdiction over Defendant under Cal. Code Civ. Proc. §  
 5 410.10 because some of the acts alleged herein were committed, and Plaintiffs incurred their  
 6 injury, in California (and, specifically, the Southern District of California).

7 9. Venue is also proper before this Court under 28 U.S.C. § 1391(b)(2).

#### 8 **IV. THE PARTIES**

9 10. **Plaintiff:** Plaintiff resides in San Diego, California. In July 2003, Defendant  
 10 originated a \$60,000 HELOC for Plaintiff that was secured by his personal residence. Several  
 11 years later, Defendant suspended Plaintiff's HELOC from further draws.

12 11. **Defendant:** Defendant is a national banking association with its main offices in  
 13 North Carolina. Defendant is one of the country's largest banks and has offices in this state and  
 14 throughout the country.

15 12. **DOE Defendants:** Plaintiff is ignorant about the true names of defendants sued  
 16 as DOES 1 through 50, inclusive, and their wrongful conduct, and therefore sues these  
 17 defendants by fictitious names. Plaintiff will seek Court leave to amend this complaint to allege  
 18 their true names and capacities when ascertained. Additionally, Plaintiff alleges on information  
 19 and belief that at all relevant times, DOES 1-50, inclusive, were defendants' agents, servants,  
 20 employees, representatives, partners, and related or affiliated entities, and in doing the things  
 21 hereinafter mentioned, were acting in the course and scope of their agency, employment, or  
 22 retention with defendants' permission, consent, authority and ratification.

23 13. **Defendants' Aiding and Abetting:** All defendants, and each of them, aided and  
 24 abetted, encouraged and rendered substantial assistance to the other defendants in breaching their  
 25 obligations to Plaintiff and the Class and Subclasses, as alleged herein. In taking action, as  
 26 particularized herein, to aid and abet and substantially assist the commissions of these wrongful  
 27 acts and other wrongdoings complained of, defendants each acted with an awareness of the  
 28 primary wrongdoing and realized that its conduct would substantially assist the accomplishment

1 of the wrongful conduct, wrongful goals and wrongdoing.

2 **V. PLAINTIFF'S INDIVIDUAL ALLEGATIONS**

3 14. Plaintiff purchased his home for \$600,000. He took out both a first mortgage for  
4 \$480,000 and a HELOC for \$60,000 on his home through Defendant. Plaintiff obtained and  
5 anticipated using his HELOC for personal and home related expenses. After 2003, Plaintiff  
6 maintained a zero balance on the HELOC.

7 15. Communications with Defendant's agents and representatives have revealed that  
8 Defendant claims that in January 2008, Defendant mailed Plaintiff a letter indicating that it had  
9 suspended Plaintiff's HELOC from future draws effective immediately. Defendant claims that  
10 the letter stated that the suspension was due to the fact that home values are declining and that  
11 the value of Plaintiff's home had significantly declined. Defendant claims that it does not know  
12 whether the letter did or did not state what the supposed declined value was, how Defendant  
13 determined the supposed decline, what the initial home value at the HELOC origination was,  
14 what value was needed for full reinstatement of the HELOC, or any other material information  
15 related to Defendant's suspension of Plaintiff's HELOC.

16 16. At a later point in time, and unaware of the letter that Defendant claims it sent,  
17 Plaintiff contacted Defendant to inquire about the status of his HELOC. He was told that he  
18 could not draw any money from the HELOC and that Defendant used an automated value  
19 technique to ascertain the current value of his home. Defendant could not provide any further  
20 details on how Defendant determined the value of his home. Defendant claimed that it had sent a  
21 letter notifying Plaintiff of the suspension but could not find the letters it claimed to have sent  
22 Plaintiff.

23 17. Plaintiff believes that Defendant's decision to suspend his HELOC was based, at  
24 the most, on a geographic area survey covering home values in the area where Plaintiff's home  
25 was located and not on an actual assessment of Plaintiff's home value. Thus, Defendant had no  
26 reasonable justification for suspending Plaintiff's HELOC.

27 18. Plaintiff sustained a variety of damages from Defendant's wrongful acts. By  
28 suspending Plaintiff's HELOC, Defendant denied Plaintiff access to \$60,000, thereby preventing

1 Plaintiff from enjoying the benefits of his contractual relationship with Defendant. Plaintiff  
 2 agreed to pay an annual fee in return for access to a \$60,000 HELOC. Plaintiff never intended,  
 3 nor agreed, to pay the annual fee in exchange for essentially giving Defendant an option to  
 4 extend credit only if Defendant wanted to do so. When Defendant suspended Plaintiff's credit  
 5 limit, it frustrated and extinguished Plaintiff's ability to realize the benefit of the bargain Plaintiff  
 6 expected to realize from the contract and that fee.

7 19. Plaintiff's HELOC with Defendant was his only line of credit. Defendant's  
 8 unilateral suspension of Plaintiff's HELOC eliminated the credit Plaintiff had available to him to the  
 9 outstanding balance on that credit. In turn, on information and belief, Defendant's acts drove up his  
 10 Credit Utilization Rate, a major component of his credit rating. Defendant's unlawful suspension  
 11 damaged Plaintiff's credit rating and increased the cost of credit to him. In addition, Defendant's  
 12 acts eliminated Plaintiff's access to credit when he, in fact, needed money, which increased the  
 13 opportunity costs of Plaintiff's spending.

14 20. At bottom, Plaintiff entered into a contractual relationship with Defendant for,  
 15 among other things, a \$60,000 HELOC. Defendant froze Plaintiff's HELOC without the  
 16 required sound factual basis. Defendant failed to assess Plaintiff's actual home value, but instead  
 17 relied on a general area survey, if that. Plaintiff's harm and damages are continuing in nature.

18 21. On information and belief, Defendant did not send the letters or notices it claims  
 19 to have sent; thus, Plaintiff did not discover Defendant's actions as alleged herein until within  
 20 one year of the filing of this Complaint.

## 21 **VI. CLASS ALLEGATIONS**

22 22. **Class and Subclasses:** Plaintiff brings this lawsuit on behalf of an ascertainable  
 23 nationwide class and subclasses under Federal Rule of Civil Procedure 23(b):

24 **a. Class:** The class consists of:

25 All persons who have or had a HELOC from Defendant that was  
 26 reduced or suspended due to a purported significant decline in the  
 27 value of the property securing the HELOC ("Class" or "Class  
 28 Members").



b. **Subclass A:** Subclass A consists of:

All Class Members who currently have HELOCs with Defendant and who's HELOCs have been reduced or suspended by Defendant purportedly due to a significant decline in the value of the property securing the HELOC ("Injunctive Relief Subclass").

c. **Subclass B:** Subclass B consists of:

All Class Members who paid an annual fee to maintain their HELOC account with Defendant ("Annual Fee Subclass").

23. **Excluded from Class and Subclasses:** Excluded from the Class and Subclass A Subclass B, and Subclass C ("Subclasses") are (i) any Judge or Magistrate presiding over this action and their family members; (ii) Defendants, and their corporate parents, subsidiaries and affiliates, officers and directors, any entity in which Defendants have a controlling interest; (iii) persons who properly and timely request to be excluded; and (iv) the legal representatives, successors or assigns of any such excluded persons or entities. Plaintiff anticipates the need to potentially amend the class definition pending discovery.

24. **Numerosity:** Members of Class and Subclasses ("Members") are so numerous that joinder of all Members is impracticable. Defendant sent its generic credit line freeze letters (or substantially similar letters) to thousands of HELOC borrowers, and a substantial percentage of the recipients of these letters fall into the definition of one or more of the Subclasses. While the exact numbers of Members are unknown to Plaintiff at this time, such information can be ascertained through appropriate discovery from records maintained by Defendant and its agents.

25. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Members is impracticable and the likelihood of individual members prosecuting separate claims is remote. Individual Members do not have a significant interest in controlling litigation because their individual damages likely will be relatively small. Relief concerning Plaintiff's rights under the laws alleged herein and with respect to the Class and Subclasses as a whole would be appropriate. Plaintiff knows of no difficulty to be encountered in this case's management that would preclude maintenance as a class action.

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1           26.   **Predominance and Commonality:** Common questions of law and fact exist as  
 2 to all Members and predominate over questions affecting only individual Members. The  
 3 common questions include:

- 4           a. What were Defendant's criteria for reducing the credit limits on its HELOCs;
- 5           b. What were Defendant's methods for valuing the homes securing the HELOCs
- 6           which credit limits it reduced;
- 7           c. Whether Defendant's reduction of, and/or failure to reinstate, the credit limits
- 8           on the HELOCs violated Regulation Z and/or TILA;
- 9           d. Whether Defendant's reduction of, and/or failure to reinstate, the credit limits
- 10          breached the terms of the HELOC agreements;
- 11          e. Whether Defendant's reduction of, and/or failure to reinstate, the credit limits
- 12          on the HELOCs was unfair and/or illegal and constituted a violation of
- 13          California's UCL;
- 14          f. Whether Defendant's reduction of, and/or failure to reinstate, the credit limits
- 15          on the HELOCs diminished the benefit of the bargain its customers derived
- 16          from paying annual fees to maintain their HELOC accounts;
- 17          g. Whether Defendant's reduction of, and/or failure to reinstate, the credit limits
- 18          on the HELOCs while assessing and collecting annual account fees was unfair
- 19          and/or illegal and constituted a violation of California's UCL; and
- 20          h. Whether Plaintiffs and the Class are entitled to relief, and the nature of such
- 21          relief.

22          27.   **Typicality:** Plaintiff's claims are typical of other Members' claims because  
 23 Plaintiff and the Class were exposed to virtually identical conduct and sustained damages from  
 24 that conduct. The California and federal laws under which Plaintiff's claims arise do not conflict  
 25 with the laws of any other state in any material way.

26          28.   **Adequacy:** Plaintiff can fairly and adequately represent the Class and  
 27 Subclasses' interests; Plaintiff has no conflicts of interest with other Members, and has retained  
 28 counsel competent and experienced in class action and civil litigation. Further, Defendant does



1 not have a defense unique to Plaintiff.

2 29. **Policies Generally Applicable to the Class.** This class action also is appropriate  
3 for certification because Defendant acted or refused to act on grounds generally applicable to the  
4 Class and Subclasses, thereby making final injunctive relief or corresponding declaratory relief  
5 appropriate. Defendant's policies apply and affect class members uniformly, and Plaintiff's  
6 challenge to these policies hinges on Defendant's conduct, not on facts or law applicable to only  
7 Plaintiff.

8 **FIRST CLAIM FOR RELIEF**  
9 **(For Violation of the TILA and Regulation Z — Actual and Statutory Damages)**  
10 **On Behalf of the Class**

11 30. Plaintiff incorporates the above allegations by reference.

12 31. The Truth-in-Lending Act ("TILA") and its implementing regulation (Regulation  
13 Z) restrict Defendant from changing any of the terms of a mortgage or HELOC, including the  
14 credit limit. 15 U.S.C. § 1647(c)(1); 12 C.F.R. § 226.5b(f)(3). The exception relevant here  
15 permits Defendant to reduce the credit limits on its HELOCs "during any period in which . . .  
16 [t]he value of the consumer's principal dwelling which secures any outstanding balance is  
17 significantly less than the original appraisal value of the dwelling." 15 U.S.C. § 1647(c)(2)(B);  
18 12 C.F.R. § 226.5b(f)(3)(vi)(A).

19 32. The Federal Reserve Board Official Staff Commentary to Regulation Z ("the  
20 Official Staff Commentary") defines "significant decline" for purposes of § 226.5b(f)(3)(vi)(A)  
21 as a decline in home value so that "the initial difference between the credit limit and the  
22 available equity (based on the property's appraised value . . . ) is reduced by fifty percent." The  
23 Official Staff Commentary further states that Regulation Z "does not require a creditor to obtain  
24 an appraisal before suspending credit privileges [but] a significant decline must occur before  
25 suspension can occur." On August 26, 2008, the Office of Thrift Supervision issued official  
26 guidance that warned it would violate Regulation Z to "*reduce the credit limits of all HELOC*  
27 *accounts in a geographic area in which real estate values are generally declining without*  
28 *assessing the value of the collateral that secures each affected HELOC account.*"

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1 33. Before reducing the limits of its customers' HELOCs, Defendant had an  
2 obligation to have a sound factual basis for concluding that the value of the homes had actually  
3 declined significantly. *See* 15 U.S.C. § 1647(c)(2)(B); 12 C.F.R. § 226.5b(f)(3)(vi)(A); FDIC  
4 June 26, 2008 Financial Institution Letter (FIL-58-2008), *Home Equity Lines of Credit,*  
5 *Consumer Protection and Risk Management Consideration When Changing Credit Limits and*  
6 *Suggested Best Practices*, 2. Instead, on information and belief, Defendant knowingly and  
7 intentionally used certain valuation methods that drastically devalued the Class members'  
8 properties in order to justify the blanket suspensions of their HELOCs.

9 34. Additionally, because a "significant decline" requires a consideration of the  
10 property's available (unencumbered) equity, Defendant had an obligation to calculate and  
11 consider the available equity in each property in order to determine whether the available equity  
12 had suffered a significant decline within the meaning of Regulation Z. *See* Official Staff  
13 Commentary to 12 C.F.R. 226.5b(f)(3)(vi), Section 6. Such a calculation necessarily required  
14 Defendant to determine the existence of any other mortgages or encumbrances on the property  
15 and, if so, whether the balance of any other such mortgages had actually decreased since the  
16 initial creation of the HELOC. Defendant failed to make this required inquiry.

17 35. Defendant violated TILA and Regulation Z by suspending and reducing the Class  
18 members' HELOCs without first determining the level of available equity in their property,  
19 which has not significantly declined within the meaning of Regulation Z, due to a significantly  
20 higher home value than initially determined by Defendant's AVMs, and due to the Class  
21 members paying down the balances on their first mortgages. Upon information and belief,  
22 Defendant intentionally ignored or disregarded this information before it chose to suspend the  
23 Class members' HELOCs and when deciding whether to reinstate suspended or reduced  
24 HELOCs. On further information and belief, neither the Plaintiffs' nor the Class members home  
25 values or equity levels had significantly declined so as to warrant reductions or suspensions

26 36. Defendant's suspension or reduction of Plaintiffs' HELOCs, and subsequent  
27 failure to reinstate them raises three implications:

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- a. Defendant's AVMs are inherently flawed because they undervalue individual properties, and cannot be used to justify reductions of the HELOCs;
- b. Defendant failed to conduct an individual inquiry, or consider current mortgage balances in determining whether a specific home had suffered a significant decline in value; and
- c. Defendant ignored subsequent higher valuations obtained through the AVMs or actual appraisals, which confirmed that homeowners' home values were no longer suffering from a substantial decline, or, indeed, that they had never suffered a substantial decline in the first instance.

37. On information and belief, Defendant 1) used inaccurate self-serving AVMs to reduce the credit limits on the Class members' HELOCs, failed to continue to monitor the value of the Class members' homes, and insisted that the Class members obtain formal appraisals to reinstate their HELOCs and/or 2) used inherently faulty AVMs that undervalued the Class members' home to justify the reduction of the credit limits on the Class member's HELOCs.

38. Finally, the Official Staff Commentary to Regulation Z, 226.5b(f)(3)(i), provides that a bank may not impose "triggering events" or responses that the regulation expressly addresses in a manner different from that provided in the regulation." Namely, "a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decline in property value since the regulation allows that response only for a significant decline." *Id.*

39. In direct violation of this provision, Defendant unlawfully suspended the Class members' HELOCs in response to insignificant declines in home values or where the value of the underlying property had not declined at all. Alternatively, when the value of the homes securing the HELOCs for Plaintiff and other Class members was no longer in a significant decline from the original valuation, Defendant failed to reinstate their credit limits.

40. Defendant's reduction of and/or refusal to reinstate the credit limit for Plaintiffs' and other Class members' HELOCs violated and continues to violate TILA and Regulation Z.

41. Defendant's violations of TILA and Regulation Z damaged Plaintiffs and the other Class members. These damages include the denial of the full use of the bargained-for benefit of the HELOCs, early termination fees, appraisal fees, replacement HELOC closing costs, the increased price of credit, adverse effects on credit scores, the lost benefit of the bargain on annual account fees, and "not sufficient funds" fees.

42. Plaintiffs, on their own behalf and behalf of the other Class members, seeks actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2)(B), and costs of the action, together with reasonable attorneys' fees under 15 U.S.C. § 1640(a)(3).

**SECOND CLAIM FOR RELIEF**  
**(For Violation of the TILA and Regulation Z — Declaratory and Injunctive Relief)**  
**On Behalf of Injunctive Relief Subclass**

43. Plaintiff incorporates the above allegations by reference.

44. Plaintiff still maintains a HELOC with Defendant though it was suspended from future draws in January 2008 based on the purported significant decline in their home value. As fully described above, no such significant decline has occurred.

45. As fully described above, Defendant violated TILA and Regulation Z by using grossly inaccurate valuation methods to undervalue the properties and justify blanket suspensions and reductions of the HELOCs for Plaintiff and other members of the Injunctive Relief Subclass.

46. Defendant further violated TILA and Regulation Z by suspending or reducing the HELOCs in the absence of the significant decline in homes securing the HELOCs and without having a sound factual basis for concluding that there had been any such significant decline.

47. The Injunctive Relief Subclass members and Defendant have adverse legal interests, and there is a substantial controversy between the Injunctive Relief Subclass and Defendant of sufficient immediacy and reality to warrant the issuance of a declaratory judgment as to whether Defendant's mass suspension and reduction of HELOCs violates TILA and Regulation Z.

48. Plaintiff, on their own behalf and on behalf of the other Injunctive Relief Subclass members, seek:

a. a declaratory judgment under 28 U.S.C. § 2201 that Defendant violated TILA and Regulation Z by:

i) using grossly inaccurate valuation methods to undervalue the properties and justify blanket suspensions and reductions of the HELOCs; and

1 ii) suspending or reducing the HELOCs despite the properties securing  
2 the HELOCs not having declined significantly and despite Defendant not  
3 having a sound factual basis for concluding that there had been any such  
4 significant decline; and

5 b. full reinstatement of the credit limits on all the HELOCs that:

6 i) have been unlawfully reduced or suspended; or

7 ii) have not been reinstated where the reinstatement was warranted.

8 **THIRD CLAIM FOR RELIEF**  
9 **(For Breach of Contract)**  
10 **On Behalf of the Class**

11 49. Plaintiff incorporates the above allegations by reference.

12 50. Plaintiffs and the other Class members obtained HELOCs from Defendant. The  
13 terms of these HELOC agreements constitute a contract between the Class members and Defendant.

14 51. The HELOC agreements contain a term which purports to provide Defendant the  
15 discretion to reduce the credit limit during any period in which the value of the home securing the  
16 HELOC declines significantly below the home's appraised value. Defendant drafted the terms of  
17 the HELOC agreements, and any ambiguity in the phrase "declines significantly" must be strictly  
18 construed against Defendant.

19 52. Plaintiffs and the other Class members performed under their HELOC agreements  
20 with Defendant and made all payments due to Defendant under the HELOC agreements.

21 53. The credit limit under the Class members' HELOC agreements was a material term  
22 of the contract between the Class members and Defendant. Defendant materially breached the  
23 terms of the HELOC agreements by reducing the credit limit for Plaintiffs' and other Class  
24 members' HELOCs because their home values had not actually declined significantly.  
25 Alternatively, Defendant materially breached the terms of the HELOC agreements by failing to  
26 reinstate the credit limits for Plaintiffs' and other Class members' HELOCs after the value of the  
27 homes securing the HELOCs was no longer in a significant decline and/or when Defendant became  
28 aware or should have become aware that there was not a then-present significant decline in value.

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1 54. To the extent that any of the Class members' HELOCs contain any term purporting  
2 to allow Defendant to unilaterally reduce the credit limit of TILA Class members without  
3 complying with TILA and Regulation Z, such terms are void and violate public policy.

4 55. Defendant's breach of contract damaged Plaintiffs and the other Class members.  
5 These damages include the denial of the full use of the bargained-for benefit of the HELOCs, early  
6 termination fees, appraisal fees, replacement HELOC closing costs, the increased price of credit,  
7 adverse effects on credit scores, the lost benefit of the bargain on annual account fees, and "not  
8 sufficient funds" fees.

9 56. Plaintiffs, on their own behalf and behalf of the other Class members, seek  
10 damages for Defendant's breach of contract, as well as interest, attorneys' fees and costs  
11 pursuant to Cal. Code Civ. Proc. § 1021.5.

12 **FOURTH CLAIM FOR RELIEF**  
13 **(For Violation of California's UCL, Cal. Bus. & Prof. Code § 17200)**  
14 **On Behalf of the Class**

15 57. Plaintiff incorporates the above allegations by reference.

16 58. Defendant's reduction of and/or failure to reinstate the original credit limits for  
17 Plaintiffs and other Class members' HELOCs violated TILA and Regulation Z. Defendant sent a  
18 form letter to each of the Class members that stated the suspension or reduction of the credit limits  
19 was due to the significant decline in the value of the homes that secured the HELOCs.

20 59. Defendant's form letters were deceptive and untrue because they were based on  
21 AVMs that recklessly or intentionally undervalued the homes securing the Class members'  
22 HELOCs. On information and belief, Defendant either intentionally or recklessly used AVMs that  
23 did not have adequate safeguards to ensure their integrity or accuracy to falsely justify reducing  
24 Plaintiffs' and other Class members' HELOC limits. Moreover, Defendant's misuse and/or  
25 mishandling of these AVMs violated TILA and Regulation Z inasmuch as these particular AVMs  
26 were not sufficient, reliable, or adequate grounds to justify Defendant's reduction of the HELOC  
27 limits.

28 60. In light of Defendant's actions, its reduction of and/or failure to reinstate the Class  
members' HELOC limits was unfair because it caused a substantial injury to consumers and



1 competition that was not outweighed by any countervailing benefits to consumers or to competition  
2 and was not an injury the consumers themselves could reasonably have avoided. Moreover,  
3 Defendant's reduction of and/or failure to reinstate the Class members' HELOC limits offends  
4 public policy and/or violates the policy or spirit behind TILA, Regulation Z, Title XI of the  
5 Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the UCL, is oppressive  
6 and unscrupulous, and threatens or harms competition in the post-bust HELOC market.

7 61. These unlawful, deceptive, and unfair acts and practices are unfair competition in  
8 violation of the UCL. Defendant's violations of the UCL caused Plaintiffs and the other Class  
9 members injury in fact, through lost money and property.

10 62. Defendant's violations of the UCL damaged Plaintiffs and the other Class members,  
11 as Defendant obtained money and/or property that rightfully belonged to Plaintiffs and the Class  
12 members, including the lost benefit of the bargain on annual account fees, and lost use of the funds  
13 available for credit.

14 63. Plaintiffs, on their own behalf and behalf of the other Class members, seek  
15 restitution of any money or property obtained by Defendant from Plaintiffs and the Class members  
16 through such unfair competition under the UCL (Cal. Bus. & Prof. Code § 17203), as well as  
17 interest, attorneys' fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

18 **FIFTH CLAIM FOR RELIEF**  
19 **(For Violation of California's UCL, Cal. Bus. & Prof. Code § 17200)**  
20 **On Behalf of Annual Fee Subclass**

21 64. Plaintiff incorporates the above allegations by reference.

22 65. The Annual Fee Subclass members obtained HELOCs from Defendant under the  
23 terms of the HELOC agreements. According to these HELOC agreements, Plaintiff and the other  
24 Annual Fee Subclass members paid Defendant an annual fee to maintain their HELOC accounts.  
25 When Defendant reduced their credit limits, it proportionately diminished the benefit of the bargain  
26 associated with that fee.

27 66. On information and belief, Defendant has used AVMs to justify its reduction of the  
28 credit limits for Plaintiff and other Annual Fee Subclass members' HELOCs. On information and  
belief, Defendant violated TILA and Regulation Z and breached the implied covenant of good faith

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29<sup>TH</sup> Floor  
San Diego, CA 92101

1 and fair dealing in their HELOC agreements by either intentionally or recklessly using AVMs that  
2 they knew or should have known lacked adequate safeguards to ensure their integrity or accuracy to  
3 justify reducing Plaintiff's and other Annual Fee Subclass members' HELOC limits. Defendant's  
4 use of AVMs deprived Plaintiff and the Annual Fee Subclass members of the benefit of the bargain  
5 associated with Defendant's annual fee.

6 67. The imposition and failure to refund the annual fee was unfair because Defendant's  
7 reduction of Plaintiff's and other Annual Fee Subclass members' HELOC limits and use of AVMs  
8 deprived them of the benefit of the bargain associated with Defendant's annual fee. This caused a  
9 substantial injury to consumers and competition that was not outweighed by any countervailing  
10 benefits to consumers or to competition and was not an injury the consumers themselves could  
11 reasonably have avoided. Moreover, Defendant's imposition and failure to refund the annual fee  
12 was premised on a violation of TILA and Regulation Z and offends public policy and/or violates the  
13 policy or spirit behind TILA, Regulation Z, Title XI of the Financial Institutions Reform, Recovery,  
14 and Enforcement Act of 1989, and the UCL, is oppressive and unscrupulous, and threatens or harms  
15 competition in the post-mortgage bust market for HELOCs.

16 68. These unfair acts and practices constitute unfair competition in violation of the UCL.

17 69. Defendant's violations of the UCL damaged Plaintiff and the other Annual Fee  
18 Subclass members. Defendant's violations of the UCL caused Plaintiff and the other Annual Fee  
19 Subclass members injury in fact, through lost money and property, including the lost benefit of the  
20 bargain associated with Defendant's annual account fees.

21 70. Plaintiff, on his own behalf and behalf of the other Annual Fee Subclass members,  
22 seek restitution of any money or property gained by Defendant from Plaintiff and the other Annual  
23 Fee Subclass members through such unfair competition under the UCL (Cal. Bus. & Prof. Code §  
24 17203), as well as interest, attorneys' fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

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26 ///

27 ///

28 ///

**PRAYER FOR RELIEF**

Plaintiff, the Class and Subclasses pray for judgment against Defendants as follows:

- A. Certifying the action as a class action and designating Plaintiffs and their counsel as representatives of the Class and Subclasses;
- B. Awarding statutory damages, actual damages, attorneys' fees, and costs under 15 U.S.C. § 1640(a)(2)(B) for the Class on the First Claim for Relief;
- C. Declaring Defendant's actions alleged herein unlawful, and directing Defendant to reinstate the credit limits on all unlawfully suspended or reduced HELOCs of Injunctive Relief Subclass members on the Second Claim for Relief;
- D. Awarding actual damages for the Class on the Third Claim for Relief, including damages for denial of the full use of the bargained-for benefit of the HELOCs, damages for adverse effects on credit scores, early termination fees, appraisal fees, replacement HELOC closing costs, the increased price of credit, the lost benefit of the bargain on annual account fees, and "not sufficient funds" fees;
- E. Restitution on the Fifth Claim for Relief for all money or property obtained by Defendant from Plaintiffs and the other Class members through Defendant's unfair competition, including annual account fees and lost use of the funds available for credit;
- F. Restitution for the Annual Fee Subclass under the Sixth Claim for Relief for all money or property obtained by Defendant from Plaintiff and the other Annual Fee Subclass members through Defendant's unfair competition, including Defendant's annual account fees;
- G. Awarding reasonable attorneys' fees for Plaintiffs and their counsel;
- H. Awarding pre- and post-judgment interest; and
- I. Granting such other and further relief as the Court may deem just and proper.

///

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///

**JURY TRIAL DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Dated: April 29, 2010

HARRISON PATTERSON & O'CONNOR LLP

By: 

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Alisa A. Martin (SBN 224037)

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JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

BRYAN VESS, on behalf of himself and all others similarly situated

## DEFENDANTS

BANK OF AMERICA, N.A.; and DOES 1 through 50, inclusive

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant U.S. DISTRICT COURT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED: 3 Y;

Attorneys (If Known)

DEPUTY

10CV 0920 JAH

RBB

(c) Attorney's (Firm Name, Address, and Telephone Number)

James R. Patterson, Esq./Alisa A. Martin, Esq.  
HARRISON PATTERSON & O'CONNOR LLP  
402 West Broadway, 29<sup>th</sup> Floor  
San Diego, CA 92101  
Tel: 619-756-6990 / Fax: 619-756-6991

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1348, 28 U.S.C. § 1332(d)(2), 28 U.S.C. § 1331, 28 U.S.C. § 1367

Brief description of cause:

illegal and improper reduction and suspension of credit limits on home equity lines of credit

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION  
demanded in complaint:  
UNDER F.R.C.P. 23

DEMAND \$IN EXCESS OF 5,000,000.00

CHECK YES only if

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 29, 2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS012974  
Cashier ID: mbain  
Transaction Date: 04/29/2010  
Payer Name: CALEXPRESS

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CIVIL FILING FEE

For: VESS V BANK OF AMERICA  
Case/Party: D-CAS-3-10-CV-000920-001  
Amount: \$350.00

---

CHECK

Check/Money Order Num: 55089  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.